## CCRB INVESTIGATIVE RECOMMENDATION

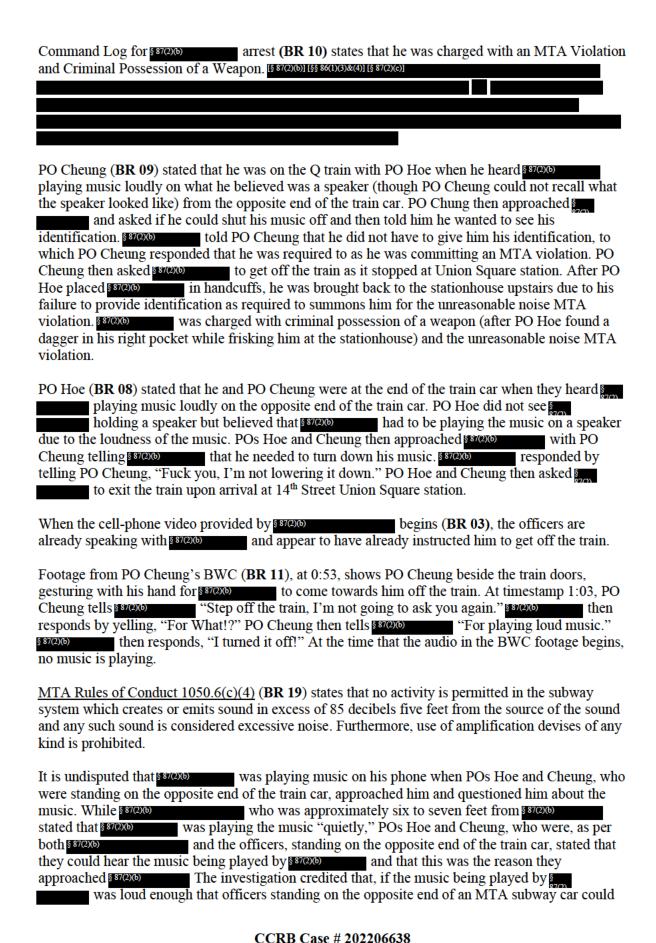
Investigator:		Team:	CCRB Case #:	☑	Force		Discourt	. U.S.
Zim Sessoms		Squad #16	202206638	☑	Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:			18 1	Mo. SO	OL	Precinct:
Sunday, 10/02/2022 9:20 PM		Q Train at 14th Street- station	Union Square		4/	2/202	4	13
Date/Time CV Reported		CV Reported At:	How CV Reported	:	Date/Tin	ne Reco	eived at CC	RB
Mon, 10/03/2022 4:57 PM		CCRB	Call Processing System		Mon, 10/	/03/202	22 4:57 PM	Л
Complainant/Victim	Type	Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. PO Dennis Hoe	03915	949106	TB SSTF					
2. PO Max Cheung	19707	958401	TB SSTF					
Officer(s)	Allegatio	on			Inv	vestiga	ator Reco	mmendation
A.PO Dennis Hoe		olice Officer Dennis Ho	e stopped § 87(2)(b)			-		
B.PO Max Cheung		olice Officer Max Cheu						
C.PO Dennis Hoe	Force: Po	olice Officer Dennis Hoo	e used physical force	e ag	ainst			
D.PO Dennis Hoe		olice Officer Dennis Ho with the use of force.	e threatened § 87(2)(6)					
E.PO Max Cheung		olice Officer Max Cheu with the use of force.	ng threatened § 87(2)(6)	l				
F.PO Max Cheung	Force: Po	olice Officer Max Cheur 7(2)(b)	ng used physical for	ce				
G.PO Max Cheung	Abuse: P	olice Officer Max Cheu	ng stopped § 87(2)(b)					
H.PO Dennis Hoe	Abuse: P	olice Officer Dennis Ho s to \$87(2)(6)	e issued an unlawfu	1				
§ 87(2)(g), § 87(4-b)								
0.03/03/0.000								
§ 8/(2)(g), § 8/(4-b)								
§ 87(2)(g), § 87(4-b) § 87(2)(g), § 87(4-b)	summons	s to \$87(2)(b)						

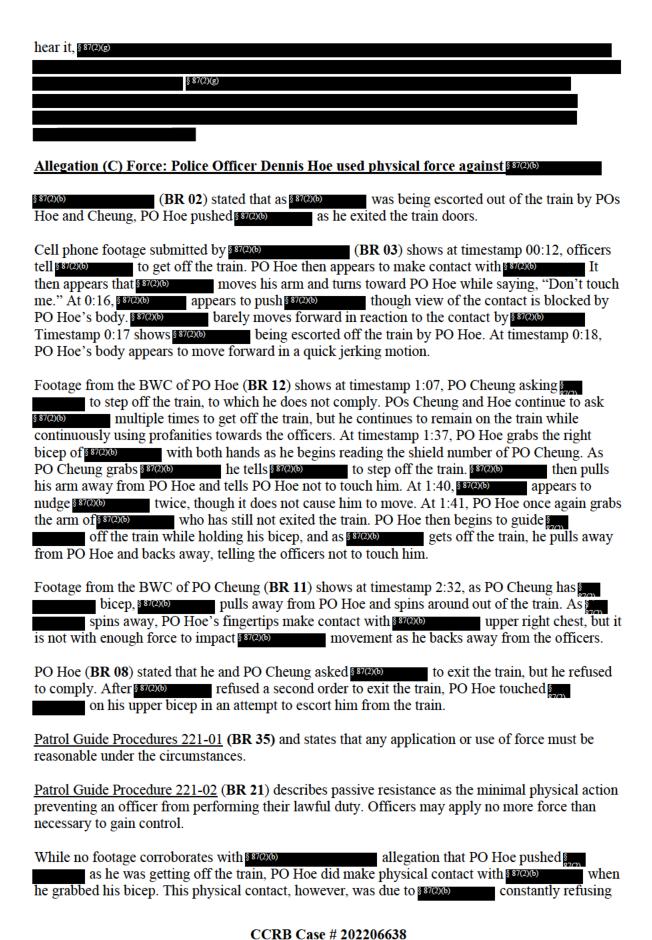
## **Case Summary**

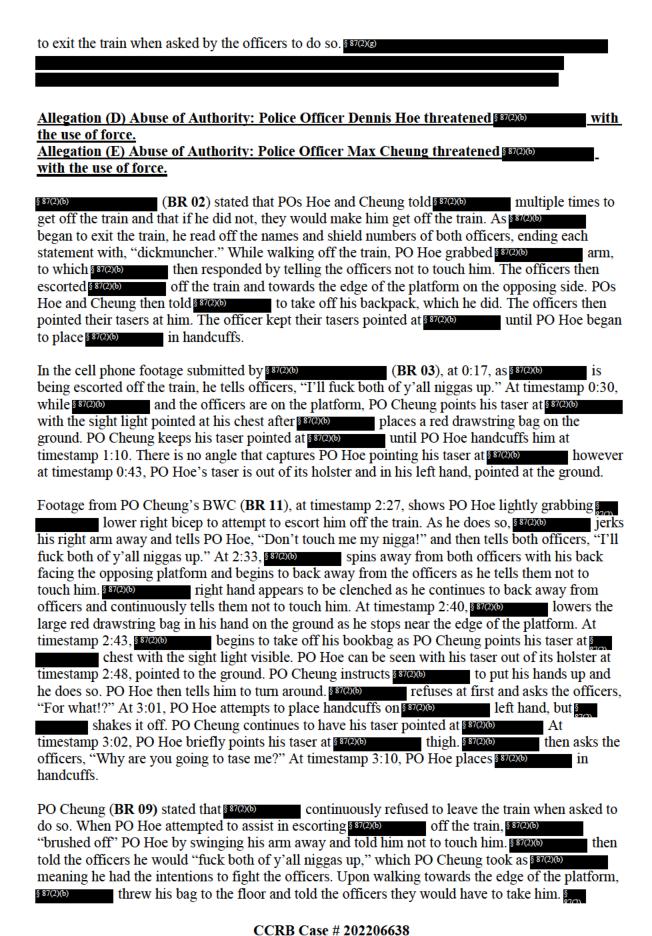
On October 3, 2022, § 87(2)(6) filed this complaint with the CCRB via the Call Processing System (BR 01). On October 2, 2022, at approximately 9:20 PM, \$87(2)(6) was sitting in a Q train at the 14th Street-Union Square Station in Manhattan when he observed Police Officers Dennis Hoe and Max Cheung of the Transit Bureau Subway Safety Taskforce approach another individual on the train, identified by the investigation as \$87(2)(6) who was playing music on his phone. After a brief interaction with § 87(2)(b) POs Hoe and Cheung informed \$87(2)(b) that he needed to get off the train (Allegation (A, B) Abuse of Authority: Stop, \$87(2)(g) While escorting serons out of the train, PO Hoe allegedly pushed serons (Allegation (C) Force, \$87(2)(g) As \$87(2)(b) stood on the station platform, POs Cheung and Hoe withdrew their tasers and pointed them at § \$7(2)(6) (Allegation (D, E) Abuse of Authority, § 87(2)(g) Another individual who had been on the train, identified approached PO Cheung from behind. PO Cheung turned by the investigation as § 87(2)(b) around and pushed \$87(2)(6) to the ground (Allegation (F) Force, \$87(2)(9) in handcuffs, PO Cheung grabbed §87(2)(b) and took her upstairs to the Transit District 4 stationhouse (Allegation (G) Abuse of Authority: Stop, \$87(2)(9) was charged with Criminal Possession of a Weapon and an MTA Violation while § 87(2)(b) was released with a summons for Disorderly Conduct (Allegation (H) Abuse of Authority: Unlawful Summons, \$87(2)(g) Body-worn Camera (BWC) footage, with the faces of \$87(2)(6) and § 87(2)(b) NYPD due to the fact that the investigation was unable to obtain waivers from them, was obtained from the BWCs of POs Hoe and Cheung (BR 11,12,13,14,18). \$87(2)(2), \$87(4-b) provided the investigation with cell phone footage of the incident (BR 03 and 04). Findings and Recommendations Allegation (A) Abuse of Authority: Police Officer Dennis Hoe stopped [557(200)] Allegation (B) Abuse of Authority: Police Officer Max Cheung stopped \$87(2)(6) was interviewed by the CCRB on November 3, 2022 (BR 02). PO Hoe was interviewed by the CCRB on January 11, 2023 (BR 08). PO Cheung was interviewed by the CCRB on January 12, 2023 (BR 09). \$370,00 and \$370,00 did not respond to attempts to contact them and obtain statements from them. (BR 02) stated that as he was sitting on the Q train when \$37(2)(0) on the train and stood six to seven feet away from him. [87(2)(6)] then began to play music quietly on his phone, holding it up to his ear. POs Hoe and Cheung then walked to \$87(2)(0) from the opposite side of the train car and asked if that was his music playing. After \$87(2)(0) replied that it was indeed his music, the officers told him to get off the train. officers what he had done, but the officers did not answer and told him that he needed to get off the train.

get in touch with him to obtain an unsealing order. However, the entry in the Transit District 4

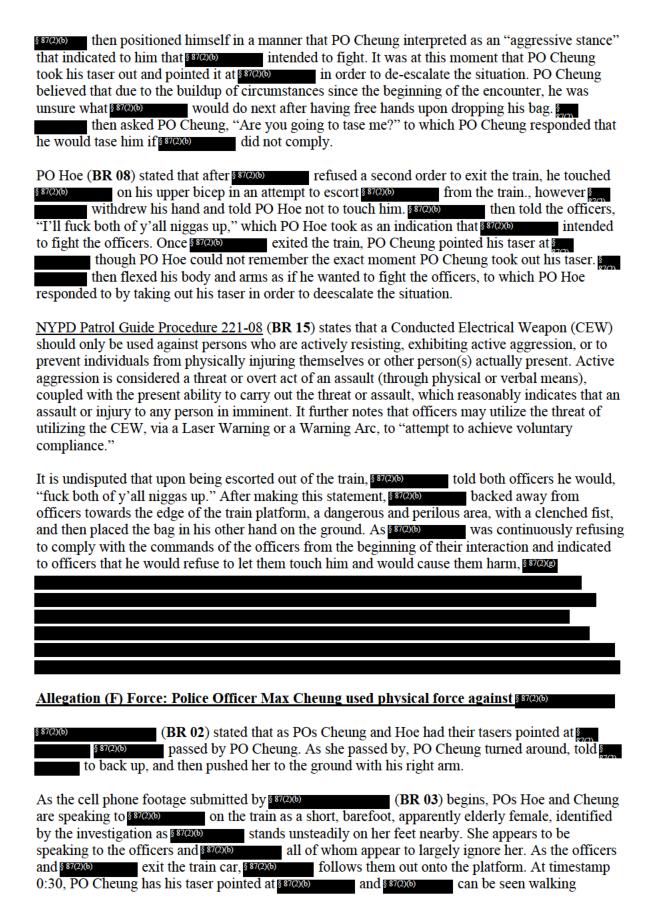
arrest related to this incident is sealed (BR 07) and the investigation was unable to

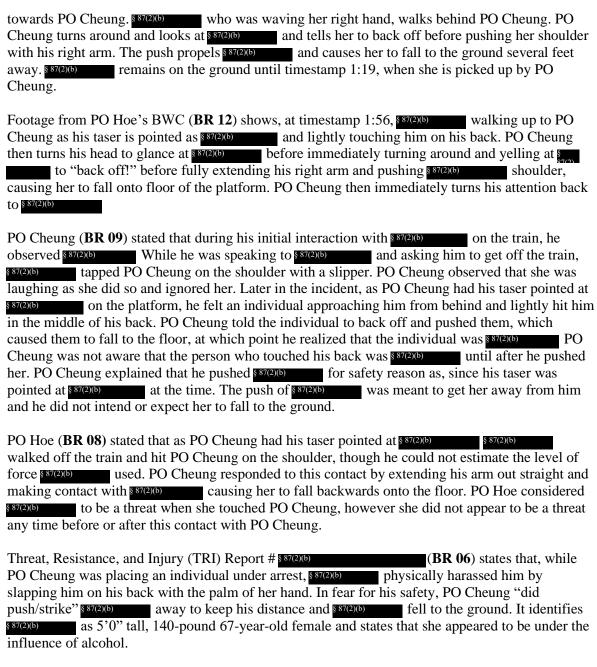






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Patrol Guide Procedures 221-01 (BR 35) and Patrol Guide Procedure 221-02 (BR 21) state officers may use force when it is reasonable to ensure officers' or civilians' safety. Officers' use of force must be reasonable under the circumstances, and de-escalation techniques, which may reduce or eliminate the need for force by gaining the subject's voluntary compliance, must be prioritized. Officers shall "apply no more than the reasonable force necessary to gain control," and excessive force is not tolerated. Factors to be considered in determining whether the use of force is reasonable include the following: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject; members of service or bystanders; whether the subject is actively resisting custody; whether the subject is attempting evade arrest by flight; the number of subjects in comparison to the number of members of service; size, age and condition of the subject in comparison to the member of service; subject's violent history if known; presence of hostile crowd or agitators; and whether the subject is

apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase likelihood of violence. Furthermore, an officer should assess the situation continually and adjust the use of force as necessary.

physical contact with him while he had his Taser pheen a nuisance during their interaction with strouch shows that strouch touch shows that strouch touch was minimal and a attention, rather than an attempt to use force again that he did not know that it was strouched PO Cheung, and instructed her to back up, before fully turning while looking at her. Furthermore, strouched portact was incident from the time the officers and strouched portact was previously made similar non-threatening contact was approach approached.	PO Cheung's response to PO Cheung as light, and video footage from multiple angles as to harm PO Cheung. While PO Cheung's ast or harm PO Cheung. While PO Cheung stated at him at the time he pushed her, the video footage he glanced at (1970) by turning his head, his body and pushing (1970) to the ground dependent on the train and, as per PO Cheung, had
§ 87(2)(g)	
Allegation (G) Abuse of Authority: PO Max Ch Allegation (H) Abuse of Authority: PO Dennis	
Summons (BR 05), written by PO I conduct, states in the narrative that (SSO) was written by PO I was in a violent and threatening manner towards an un crowd to gather. The summons makes no mention	as observed to, with intent to cause disruption, act aspecified individual and that her actions caused a
combative, causing public alarm and thus causing	ing annoyance and alarm to PO Cheung.
PO Cheung ( <b>BR 09</b> ) stated that was taken identification in order to prepare the TRI work was not considered under arrest at the time stationhouse; however, PO Cheung could not artice that point in the incident. When PO Cheung asked	sheet for the force he used on strict 4 e he escorted her to the Transit District 4 culate whether strict was free to leave at

him. It was at this point that he placed \$87(2)(b) under arrest for disorderly conduct. There were two officers with PO Cheung at this point and no public crowd formed. [87(2)6] was ultimately released from the stationhouse with a summons for disorderly conduct issued by PO Hoe When shown the summons issued to § 87(2)(b) and asked about the crowd that the summons stated was caused by \$87(2)(b) behavior, PO Cheung stated the crowd was the people who were recording on the train and some individuals recording on the platform. PO Cheung further stated that his pushing of \$87(2)(b) caused a crowd of approximately five people to gather on the platform and that he was unable to conduct an investigation with a crowd gathered. PO Hoe (**BR 08**) stated that § 87(2)(b) was taken to the Transit District 4 stationhouse due to her "disorderly" behavior of touching PO Cheung. PO Hoe explained that he heard a lot of noises and that a crowd began to form approximately five to ten feet away in response to PO Cheung making contact with \$87(2)(b) and causing her to fall to the ground. In regard to the location of the crowd, some of the civilians were already on the platform and some were from the train. touching of PO Cheung was the "violent and threatening action" that PO Hoe described on the summons. Footage from the cell phone video (BR 03) and from POs Hoe and Cheung's BWCs (BR 11, 12) show no new crowd forming after \$30(2) is pushed by the PO Cheung. The people who are present on the train and on the platform were already present and observing the officers' interaction with \$87(2)(b) and remained in their locations when PO Cheung pushed \$87(2)(b) to the floor. While \$87(2)(6) and the voices of the individuals on the train can be heard verbally protesting the push of \$87(2)(b) everyone largely remains where they are and none of the individuals observing approach \$87(2)(b) or the officers as a result. Footage from PO Cheung's BWC (**BR 11**) shows, at timestamp 3:31, PO Cheung approaching as she is on the ground and telling her, "You come here too, you come here too. Let's go. Get up." PO Cheung then picks \$87(2)(b) off the floor and begins to escort her to the stairs. When they reach the stairs, \$87(2)(6) grabs the rail of the stairs, sits down, and tells PO Cheung, "No." PO Cheung firmly tells \$87(2)(6) "Yo get up. Put your pants up and go up." \$87(2)(6) says, "What? What did I... what did I..." Three officers come down the stairs and PO Cheung tells them that everything is under control. As \$87(2)(b) is being taken up the stairs by PO Hoe, PO Cheung tells the other officers, "She's another one." PO Cheung yells at \$87(2)(b) "Come on." Let's go. Go upstairs! Let's go! Go upstairs! I ain't playing with you! You thought it was funny responds, "What?" PO Cheung tells \$87(2)(b) "Stand up and get upstairs, or I'll make you get upstairs!" As PO Cheung escorts \$87(2)(b) up the stairs with another officer, PO Cheung tells the officer, "We're going to bring her to TD 4" the other officer looks at PO Cheung and asks him, "What? Under?" At timestamp 6:17, PO Cheung appears to be speaking on the radio and asks, "You want me to just EDP her?" At timestamp 6:31, PO Cheung asks for her name. The other two officers present also ask her for her name, to which tells one of the other officers her name. PO Cheung then asks for identification, and the officers are able to find \$87(2)(6) information on a hospital band on her wrist. Due to the fact that \$87(2)(6) face is redacted in the BWC footage, it cannot be seen whether she spits at this or any other point in the video. At timestamp 9:28, PO Cheung approaches an officer and tells him, ""I need a discon. So I was trying to .... and she grabbed me, right? Shoved her to the floor." At timestamp 9:46, PO Cheung is at the front of the stationhouse with three other officers as two of them hold \$87(2)(6) PO Cheung tells one of the officers, "I'm gonna discon this one" while pointing to \$87(2)(b) At timestamp 9:54, PO Cheung begins placing \$87(2)(b) in handcuffs. At timestamp 10:17 PO Cheung points at \$87(2)(6) and tells another officer, "Female under."

In <u>People v DeBour</u>, 40 N.Y.2d 210 (1976) (**BR 20**), the court ruled that if an officer entertains a reasonable suspicion that a particular person has committed, is committing or is about to commit a crime, that officer is authorized to conduct a forcible stop and detention of that person, which the court defined as a "significant interruption with an individual's liberty of movement."

New York Penal Law 240.20 (BR 26) states that a person is guilty of disorderly conduct when with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk if they engage in violent, tumultuous, or threatening behavior. Disorderly conduct is a violation.

<u>People v Baker</u>, 20 N.Y.3d 354 (2013) (**BR 28**) determined that the presence of an intent to cause public harm is critical to the charge of disorderly conduct, and that conduct must be of a public rather than an individual dimension. Factors considered in making that finding include the time, place, nature and character of the conduct, and the number of people in the vicinity and whether they are drawn to the disturbance. Statements or actions that are directed exclusively at a PO, who is trained to defuse situations involving angry or emotionally distraught persons, undermines any inference that there is a threat of public harm.

<u>New York Penal Law 195.05</u> (**BR 37**) A person is guilty of obstructing governmental administration when they intentionally attempt to prevent a public servant from performing an official function, by means of intimidation, physical force or interference.

NYPD Patrol Guide Procedure 221-03 (BR 27) states than when an officer uses any level of reportable force the officer must notify an immediate supervisor regarding type of force used, and the reason force was used, as well as document any use of force and/or injury. The immediate supervisor must then direct the officer involved to complete their Threat, Resistance or Injury (TRI) Interaction Report.

§ 87(2)(g)
PO Hoe and PO Cheung provided differing reasons for why was grabbed on the platform and taken upstairs after she was pushed to the ground by PO Cheung. Furthermore, while POs Cheung and Hoe both accuse of committing "disorderly conduct," they provided differing accounts as to where, when, and how she committed this alleged crime.
PO Hoe stated that was taken upstairs to the Transit District 4 stationhouse due to her "disorderly" behavior of touching PO Cheung, which caused a crowd to form. However, the cell phone footage and BWC footage show that the group of individuals who were observing the incident on the platform and in the train were present and observing the officers' interactions with prior to state of touching PO Cheung. While the gathered individuals verbally protested PO Cheung's push of they remained in their relative locations and the size of the "crowd" does not change in response to any action taken by
From the beginning of the incident, \$\square\$ constantly makes contact with \$\square\$ and then finally makes contact with PO Cheung while he is attempting to take \$\square\$ (200) into custody. While the officers largely ignored \$\square\$ (200) her actions still interfered with their attempts to get \$\square\$ (200) off the train and then arrest him. \$\square\$ (200)

§ 87(2)(g)
PO Cheung's basis for believing that had committed disorderly conduct was that, once he stopped and took her upstairs, she spit on him outside the stationhouse. He stated that the only other individuals present when this occurred were two other officers and that no crowd of civilians formed as a result. An act of disorderly conduct must be public rather than individual in nature, and actions directed exclusively towards officers are not considered a threat to public harm.
§ 87(2)(g)
3 01/EVE
\$ 97(1)(a) \$ 97(4 b)
§ 87(2)(g), § 87(4-b)
Civilian and Officer CCRB Histories
• This is the first CCRB complaint to which \$87(2)(b) or \$87(2)(b) or \$87(2)(b)
<ul> <li>has been a party (BR 29, 30, and 31).</li> <li>PO Cheung has been a member of service for seven years and has been a subject in seven other.</li> </ul>
CCRB complaints and fourteen other allegations, none of which were substantiated.
PO Hoe has been a member of service for seven years and has been a subject in seven other CCRB complaints and fourteen other allegations, none of which were substantiated.  887(2)(2)
Mediation, Civil, and Criminal Histories
This complaint was not suitable for mediation.

